

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX07/24 — Low-level Operations (Air Displays and Aerobatic Manoeuvres) Exemption 2024

Purpose

The purpose of instrument *CASA EX07/24 — Low-level Operations (Air Displays and Aerobatic Manoeuvres) Exemption 2024* (the *instrument*) is to enable pilots of aircraft who do not hold a low-level rating, an aerial application rating or an aerobatics (unlimited) flight activity endorsement to conduct low-level operations at an approved air display, or during a practice flight solely for an actual, or anticipated, air display.

If a pilot holds an aerobatics (unlimited) flight activity endorsement, but not a low-level rating or an aerial application rating, the pilot may also conduct low-level operations for the purpose of practising aerobatic manoeuvres with the aircraft.

The instrument also enables pilots in command of aircraft who hold an aerobatics (unlimited) flight activity endorsement but not a low-level rating or an aerial application rating, to conduct low-level operations at an approved air display, during a practice flight solely for an actual or anticipated air display, or for the purpose of practising aerobatic manoeuvres with the aircraft, without complying with certain minimum height rules for flight over areas other than populous areas or a public gathering, provided they have not already been authorised or approved to fly the aircraft below the applicable minimum height. This reflects the competencies associated with the aerobatics (unlimited) flight activity endorsement that are constrained by the Part 61 low level flight restrictions.

The exemptions in the instrument are subject to conditions imposed by the Civil Aviation Safety Authority (*CASA*) in the interest of the safety of air navigation with which a pilot, or pilot in command, granted the exemption must comply.

Legislation

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation. Relevantly, the Governor-General has made the *Civil Aviation Safety Regulations 1998* (*CASR*) and the *Civil Aviation Regulations 1988* (*CAR*).

CASR — Exemptions (Subpart 11.F)

Each provision mentioned in this section is a provision of CASR.

Subpart 11.F provides for the granting of exemptions from particular provisions of the regulations. Subregulation 11.160(1) provides that, for subsection 98(5A) of the Act, CASA may grant an exemption from compliance with a provision of the regulations.

Under subregulation 11.160(2), an exemption may be granted to a person, or a class of persons, and may specify the class by reference to membership of a specified body or any other characteristic.

Under subregulation 11.160(3), an exemption may be granted on application by a person or on CASA's own initiative.

Under subregulations 11.170(3) and 11.175(4) of CASR, in deciding whether to, respectively, grant and reissue an exemption, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety. CASA has regard to the same test when deciding whether to grant or reissue an exemption on its own initiative.

Under subregulation 11.205(1), CASA may impose on an exemption under Subpart 11.F any condition necessary in the interests of the safety of air navigation. Under regulation 11.210, failure to comply with a condition of an exemption is a strict liability offence.

Parts 61 and 91 of CASR and Civil Aviation Order (CAO) 29.4

Unless otherwise stated, each provision mentioned in this section is a provision of CASR.

Regulation 61.005 describes what Part 61 is about. Relevantly, paragraph 61.005(6)(a) provides that Subpart 61.E sets out limitations that apply to the exercise of the privileges of all pilot licences — see Division 61.E.1.

Regulation 61.010 includes the following definitions:

- **associated:** an aircraft category rating is **associated** with a pilot licence if:
 - (a) for an application for the pilot licence — the application includes an application for the rating; or
 - (b) in any other case — the rating was granted on the basis of the applicant having met the requirements for the grant of the pilot licence with the rating.
- **flight activity endorsement** means an endorsement mentioned in column 1 of table 61.1145.
- **low-level operation** means an operation below 500 feet above ground level other than the following:
 - (a) climbing from take-off;
 - (b) descending for the purpose of landing;
 - (c) an aerial application operation.

Regulation 61.065 provides that the holder of a flight crew licence commits an offence if:

- (a) the holder conducts an activity mentioned in Part 61 while, relevantly in subparagraph (a)(i), piloting a registered aircraft; and
- (b) the holder is not authorised under Part 61 to conduct the activity.

Subregulation 61.375(1) provides that regulation 61.375 applies to the holder of a pilot licence. Under subregulation 61.375(2), the holder of a pilot licence is authorised to exercise the privileges of the licence in an aircraft of a particular category only if the holder also holds, as the associated aircraft category rating for the licence, the aircraft category rating for that category of aircraft.

The note located immediately below subregulation 61.375(2) provides that:

An aircraft category rating has effect only in conjunction with the licence for which it is granted. It does not authorise the exercise, in the aircraft category covered by the rating, of the privileges of any other licence held by the holder of the rating: see the definition of **associated** in regulation 61.010.

Subregulation 61.375(7) provides that the holder of a pilot licence is authorised to conduct an activity mentioned in column 1 of an item in table 61.375 in the exercise of the privileges of

the licence only if the holder also holds the rating mentioned in column 2 of the item. Relevantly, column 2 of item 5 in table 61.375 mentions that, for a low-level operation, the required rating is either a low-level rating or an aerial application rating.

Regulation 61.1145 provides that the kinds of flight activity endorsement are set out in column 1 of table 61.1145. Those kinds of endorsements include, in column 1 of item 5, an Aerobatics (unlimited) flight activity endorsement. Despite the limitation in table 61.375, column 2 of item 5 mentions that a flight activity endorsement authorises the activity “Conduct aerobatic manoeuvres in an aeroplane at any height”. Column 3 of item 5 sets out the related requirements — a particular category rating and a particular flight activity endorsement.

Regulation 61.1150 provides that, subject to Subpart 61.E and regulation 61.1115, the holder of an endorsement mentioned in column 1 of an item in table 61.1145 is authorised to conduct the activity mentioned in column 2 of the item.

Part 91 sets out general operating and flight rules.

Regulation 91.045 relates to applying for, granting and being taken to hold an approval under that regulation. Under subregulation 91.045(1), if a provision of Part 91, or of the Part 91 Manual of Standards, refers to a person holding an approval under this regulation, a person may apply to CASA, in writing, for the approval. Subregulations 91.045(2) and (3) provide, respectively, that:

- (a) subject to regulation 11.055, the approval must be granted; and
- (b) subregulation 11.055(1B) applies to the granting of an approval under regulation 91.045.

Subregulations 91.045(4) and (5) set out the circumstances in which the operator of an aircraft is taken to hold an approval under regulation 91.045 for the purpose of particular regulations in Part 91. However, none of those regulations are mentioned in the instrument.

Division 91.C.9 relates to special flight operations. Within that Division, regulation 91.180 relates to air displays in Australian territory and sets out a strict liability offence if a person contravenes subregulation 91.180(1) or (2).

A person contravenes subregulation 91.180(1) if:

- (a) the person conducts an air display in Australian territory; and
- (b) the person does not hold an approval under regulation 91.045 to conduct the air display.

The operator and pilot in command of an aircraft for a flight each contravene subregulation 91.180(2) if:

- (a) the flight is in an air display in Australian territory; and
- (b) the person conducting the air display does not hold an approval under regulation 91.045 to conduct the air display

Regulation 91.267 sets out the minimum height rules that apply, as subregulation 91.627(1) mentions, if an aircraft is flown other than over a populous area or a public gathering. Under

subregulation 91.267(2), the pilot in command of an aircraft for a flight contravenes this subregulation if, during the flight:

- (a) the aircraft is flown below 500 feet above the highest feature or obstacle within a horizontal radius of 300 m of the point on the ground or water immediately below the aircraft; and
- (b) none of the circumstances mentioned in subregulation (3) applies.

Subparagraph 91.267(3)(h)(i), relevantly, mentions one of those circumstances: the pilot in command of the aircraft is authorised under Part 61, or holds an approval under regulation 91.045, to fly the aircraft below the height mentioned in paragraph 91.267(2)(a).

Subsection 2 of CAO 29.4 provides that an air display shall not be conducted without the written approval of CASA. Under Part 1 of the CASR Dictionary, *air display* means organised flying performed before a public gathering, including the following:

- (a) a contest;
- (b) an exhibition of aerobatic manoeuvres;
- (c) flying in formation;
- (d) other aircraft operations associated with the air display.

Subsection 1 of CAO 29.4 provides that, in that CAO, *Air display* means organised flying including cross-country events, contests, exhibitions of flying or local flights made for the purpose of carrying passengers for hire or reward performed before a public gathering.

Information about previous broadly similar instruments and related legislative history is included immediately below, under the heading “Background”.

Background

The Explanatory Statement (the *ES*) for instrument *CASA EX08/21 — Low-level Operations for Air Displays and Aerobatics Practice Exemption 2021 (CASA EX08/21)* includes the following information:

- On 1 September 2014, new arrangements dealing with flight crew licensing commenced under Part 61 of CASR. These arrangements replaced the previous regulatory framework under Part 5 of CAR.
- Part 5 of CAR, prior to its repeal, allowed CASA to issue approvals under CAO 29.4 to conduct air displays and permissions under paragraph 157(4)(b) of CAR to the owners and operators of an aircraft to undertake low-level flying at air displays. These permissions, applicable to the owners and the operators of an aircraft, would indirectly allow pilots of the aircraft to perform low-level flights at air displays.
- The new licensing framework under Part 61 of CASR prevents a pilot from undertaking low-level operations without holding a low-level rating or an aerial application rating. After receiving industry feedback and conducting an internal review and consultation process, CASA has determined that this was not an intended consequence of the new Part 61 framework with respect to air displays. CASA has commenced work to amend the definition of *low-level operation* in regulation 61.010 of CASR to exclude air displays that are approved by CASA.
- In order to enable pilots to practice low-level aerobatic manoeuvres, CASA can issue instruments under regulation 165 of CAR to temporarily suspend the application of the rule in paragraph 166A(2)(c) of CAR in respect of a specified aerodrome.

The application provision in section 4 of instrument CASA EX08/21 mentions “an air display approved by CASA at an aerodrome specified by CASA in an instrument under regulation 165 of CAR from time to time”. Also, paragraph 5(a) of instrument CASA EX08/21 exempts each pilot in command of an aircraft to whom the instrument applies from compliance with paragraph 157(1)(b) of CAR.

After instrument CASA EX08/21 commenced on 2 February 2021, paragraph 157(1)(b) and regulation 165 of CAR were repealed (along with the remainder of Parts 11 and 12 of CAR) by item 33 of Schedule 1 to the *Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021*. Schedule 1 to those regulations commenced on 2 December 2021.

The CASR provisions that correspond to repealed regulation 157 of CAR are:

- (a) regulation 91.265, that sets out the minimum height rules that apply if an aircraft is flown over a populous area or a public gathering; and
- (b) relevantly — regulation 91.267, that sets out the minimum height rules that apply if an aircraft is flown other than over a populous area or a public gathering.

To approve a person to conduct an air display in Australian territory, CASA may grant an approval under regulation 91.045 of CASR for the purposes of regulation 91.180 of CASR. To approve a pilot in command to conduct aerobatic manoeuvres over a populous area, at an air display, or at night, CASA may grant an approval under regulation 91.045 of CASR for the purposes of subregulation 91.185(2) of CASR.

Assessing whether to grant an approval of those kinds enables CASA to identify and manage the aviation safety risks related to the low-level operations mentioned in the instrument.

Since 2015, CASA has made several instruments that are broadly similar to the instrument, most recently instrument CASA EX08/21.

Since instrument CASA EX08/21 was made, CASA has identified that the definition of **low-level operation** in regulation 61.010 of CASR unintentionally captures many flights that can be conducted safely by pilots who do not hold a low-level rating or an aerial application rating. CASA intends to amend CASR to rectify that unintended consequence, including to give effect to the policy implemented by the instrument. CASA anticipates that the proposed amendments will commence before the exemptions in the instrument cease to be in force on 31 January 2027. If this occurs, CASA will repeal the instrument.

Overview of instrument

The instrument enables pilots of aircraft who do not hold a low-level rating, an aerial application rating or an aerobatics (unlimited) flight activity endorsement to conduct low-level operations at an approved air display, or during a practice flight solely for an actual, or anticipated, air display. This exemption does not permit aerobatic manoeuvres.

The instrument also enables pilots of aircraft who hold an aerobatics (unlimited) flight activity endorsement but not a low-level rating or aerial application rating, to conduct low-level operations:

- (a) at an approved air display; or
- (b) during a practice flight solely for an actual, or anticipated, air display; or
- (c) for the purpose of practising aerobatic manoeuvres with the aircraft.

The instrument also enables pilots in command of aircraft who hold an aerobatics (unlimited flight activity endorsement) but not a low-level rating or aerial application rating, to conduct low-level operations:

- (a) at an approved air display; or
 - (b) during a practice flight solely for an actual, or anticipated, air display; or
 - (c) for the purpose of practising aerobatic manoeuvres with the aircraft;
- without complying with certain minimum height rules for flight over areas other than populous areas or a public gathering.

That provision applies only to pilots in command who are not authorised under Part 61 of CASR or do not hold an approval under regulation 91.045 of CASR to fly the aircraft below the height mentioned in paragraph 91.267(2)(a) of CASR.

The instrument includes exemptions from specified CASR requirements to achieve those outcomes.

The instrument renews and varies instrument CASA EX08/21.

The exemption in CASA EX08/21 is expressed to apply to pilots in command who meet 2 different sets of criteria. However, 2 exemptions in the instrument are expressed to apply to pilots who meet 2 different sets of criteria — see subsections 4(1) and (4). The remaining exemption is expressed to apply to a pilot in command who meets the criteria mentioned in subsection 4(7).

Other variations take account of legislative changes that have commenced since instrument CASA EX08/21 commenced on 2 February 2021, mentioned under the heading “Background”.

CASA is satisfied that the exemptions will have no negative impact on aviation safety. Each of the following kinds of pilots and pilots in command are still required to hold an aerobatics (unlimited) flight activity endorsement to conduct a low-level operation for the purpose of practising aerobatic manoeuvres in an aircraft:

- (a) a pilot to which the exemption in subsection 4(6) of the instrument applies;
- (b) a pilot in command to which the exemption in subsection 4(9) of the instrument applies.

The pilot or pilot in command must also comply with any conditions of an air display approval granted by CASA under regulation 91.045 for the purposes of regulation 91.180 of CASR, if the conditions are relevant to the operation. The pilot in command mentioned in the exemption in subsection 4(9) of the instrument must also:

- (a) before conducting the operation, conduct a risk assessment of the area to be flown over during the operation; and
- (b) ensure that the point on the ground, or water, vertically below the aircraft, during the operation, is not within 150 m of a person, vessel, vehicle or structure, or of livestock.

Content of instrument

Section 1 sets out the name of the instrument.

Section 2 sets out the duration of the instrument.

Section 3 sets out a definition used in the instrument.

The note located immediately below the heading of section 3 is a signpost note, intended to assist users of the instrument to identify particular defined terms located in the Act or the regulations.

Under subsection 4(1), the exemptions in subsection 4(3) apply to a pilot of an aircraft (the *pilot*) who:

- (a) does not hold any rating or endorsement mentioned in subparagraphs 4(1)(a)(i), (ii) and (iii); and
- (b) is conducting a low-level operation:
 - (i) at an air display of the kind mentioned in subparagraph 4(1)(b)(i); or
 - (ii) during a flight of the kind mentioned in subparagraph 4(1)(b)(ii).

Subsection 4(2), to remove doubt but without limiting subparagraph 4(1)(b)(ii), describes the kind of pilot to which the exemptions in subsection (3) apply, including more detail about the kind of operation the pilot is conducting.

Under subsection 4(3), the pilot is exempt from compliance with the following provisions in relation to the operation:

- (a) subregulation 61.065(1) of CASR, to the extent that it prohibits the pilot from conducting a low-level operation because the pilot does not hold either a low-level rating or an aerial application rating;
- (b) subregulation 61.375(7) of CASR, but only in relation to item 5 of table 61.375 of CASR.

Under subsection 4(4), the exemptions in subsection 4(6) apply to a pilot of an aircraft (also the *pilot*) who:

- (a) holds an aerobatics (unlimited) flight activity endorsement; and
- (b) does not hold any of the ratings mentioned in subparagraphs 4(4)(b)(i) and (ii); and
- (c) is conducting a low-level operation:
 - (i) at an air display of the kind mentioned in subparagraph 4(4)(c)(i); or
 - (ii) during a flight of the kind mentioned in subparagraph 4(4)(c)(ii); or
 - (iii) for the purpose of practising aerobatic manoeuvres with the aircraft — see subparagraph 4(4)(c)(iii).

Subsection 4(5), to remove doubt but without limiting subparagraph 4(4)(c)(ii), describes the kind of pilot to which the exemptions in subsection (6) apply, including more detail about the kind of operation the pilot is conducting.

Under subsection 4(6), the pilot is exempt from compliance with the following provisions in relation to the operation:

- (a) subregulation 61.065(1) of CASR, to the extent that it prohibits the pilot from conducting a low-level operation because the pilot does not hold either a low-level rating or an aerial application rating;
- (b) subregulation 61.375(7) of CASR, but only in relation to item 5 of table 61.375 of CASR.

Under subsection 4(7), the exemptions in subsection 4(9) apply to a pilot in command of an aircraft (the *pilot in command*) who:

- (a) holds an aerobatics (unlimited) flight activity endorsement; and
- (b) does not hold any rating mentioned in subparagraph 4(7)(b)(i) or (ii); and
- (c) is conducting a low-level operation:
 - (i) at an air display of the kind mentioned in subparagraph 4(7)(c)(i); or
 - (ii) during a flight of the kind mentioned in subparagraph 4(7)(c)(ii); or
 - (iii) for the purpose of practising aerobatic manoeuvres with the aircraft — see subparagraph 4(7)(c)(iii).

Subsection 4(8), to remove doubt but without limiting subparagraph 4(7)(c)(ii), describes the kind of pilot to which the exemption in subsection (9) applies, including more detail about the kind of operation the pilot is conducting.

Under subsection 4(9), the pilot in command is exempt from compliance with subregulation 91.267(2) of CASR, in relation to the operation, if:

- (a) the operation involves the aircraft being flown other than over a populous area or public gathering; and
- (b) the pilot in command is not authorised under Part 61 of CASR, or does not hold an approval under regulation 91.045 of CASR, to fly the aircraft below the height mentioned in paragraph 91.267(2)(a) of CASR.

Under subsection 4(10), the exemptions in subsections 4(3) and 4(6) are subject to the condition in subsection 5(1).

Under subsection 4(11), the exemption in subsection 4(9) is subject to the conditions in subsections 5(1), (2) and 5(3).

The condition in subsection 5(1) requires the pilot, or pilot in command, to comply with any conditions of an approval, if relevant to the operation, mentioned in subparagraph 4(1)(b)(i), (4)(c)(i) or (7)(c)(i), as applicable.

Under the condition in subsection 5(2), the pilot in command must, before conducting the operation, conduct a risk assessment of the area to be flown over during the operation.

The condition in subsection 5(3) requires the pilot in command to ensure that the point on the ground, or water, vertically below the aircraft, during the operation, is not within 150 m of a person, vessel, vehicle or structure, or of livestock.

Legislation Act 2003 (the LA)

For subsection 98(5A) of the Act, CASA may, by instrument, grant an exemption from compliance with a provision of the regulations or the CAOs. An instrument issued under paragraph 98(5A)(a) of the Act is a legislative instrument if the instrument is expressed to apply to a class of persons or aircraft. The exemption applies to a class of persons, being certain pilots of aircraft operating at an air display approved by CASA or practising aerobatic manoeuvres. The exemption is, therefore, a legislative instrument and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Sunsetting

Part 4 of Chapter 3 of the LA (the *sunsetting provisions*) does not apply to the instrument, because the instrument relates to aviation safety and is made under CASR (item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). However, this instrument will be repealed at the end of 31 January 2027, which will occur before the sunsetting provisions would have repealed the instrument if they had applied. Any renewal of the instrument will be subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA. Therefore, the exemption from sunsetting does not affect parliamentary oversight of this instrument.

Consultation

The ES for instrument CASA EX08/21 mentions that the exemption in that instrument was made following industry feedback on Subpart 61.Q of CASR dealing with low-level ratings.

The instrument is beneficial to industry. It relieves the pilots to which the instrument applies from the requirement to hold certain qualifications when conducting low-level operations:

- (a) at an air display approved by CASA; or
- (b) during a practice flight for actual, or anticipated, air displays to be conducted in Australian territory.

The instrument also relieves pilots in command from having to comply with minimum height rules when conducting these low-level operations or low-level operations for the purpose of practising aerobatic manoeuvres with the aircraft, provided they comply with specified conditions.

Under those circumstances, CASA is satisfied that no further consultation is appropriate or reasonably practicable for this instrument for section 17 of the LA.

Sector risk, economic and cost impact

Subsection 9A(1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.

Subsection 9A(3) of the Act states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9(1)(c), CASA must:

- (a) consider the economic and cost impact on individuals, businesses and the community of the standards; and
- (b) take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) which a standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact a standard would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of that standard on different industry sectors.

One of the requirements that an applicant for a low-level rating or an aerial application rating must meet is passing the flight test mentioned in the Part 61 Manual of Standards for the rating — see paragraphs 61.1070(1)(c) and 61.1115(1)(c) of CASR. The instrument will relieve the pilots to which the instrument applies from the costs related to training for and attempting those flight tests in order to meet those eligibility requirements. Apart from that cost

relief, CASA has assessed that there will be no significant change to the economic or cost impact on individuals, businesses or the community.

Impact on categories of operations

The instrument is likely to have a beneficial effect on air display operations and related businesses by promoting those operations and encouraging the use of equipment offered for sale or hire by those businesses.

Impact on regional and remote communities

The instrument is likely to have a beneficial effect on regional communities in which the air display operations will be held because it will lead participants in, and spectators of, the operations to visit those communities.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) is not required in this case, as the exemption is covered by a standing agreement between CASA and OIA under which an IA is not required for exemptions (OIA id: 14507).

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Attachment 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument does not engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not raise any human rights issues.

Making and commencement

The instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260(1) of CASR.

The instrument commences on the day after it is registered and is repealed at the end of 31 January 2027.

Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011*

CASA EX07/24 — Low-level Operations (Air Displays and Aerobatic Manoeuvres) Exemption 2024

Overview of the legislative instrument

The instrument enables pilots of aircraft who do not hold a low-level rating or an aerial application rating to conduct low-level operations at an approved air display, or during a practice flight solely for an actual, or anticipated, air display.

The instrument also enables pilots of aircraft who hold an aerobatics (unlimited) flight activity endorsement) but not a low-level rating or aerial application rating, to conduct low-level operations:

- (a) at an approved air display; or
- (b) during a practice flight solely for an actual, or anticipated, air display; or
- (c) for the purpose of practising aerobatic manoeuvres with the aircraft.

The instrument also enables pilots in command of aircraft who hold an aerobatics (unlimited) flight activity endorsement) but not a low-level rating or an aerial application rating, to conduct the low-level operations described immediately above without complying with certain minimum height rules for flight over areas other than populous areas or a public gathering, provided they have not already been authorised or approved to fly the aircraft below the applicable minimum height (see below).

The instrument includes exemptions from specified requirements of the *Civil Aviation Safety Regulations 1998 (CASR)* to achieve those outcomes. The exemptions are subject to conditions imposed by the Civil Aviation Safety Authority (*CASA*) in the interest of the safety of air navigation.

The instrument renews and varies instrument *CASA EX08/21 — Low-level Operations for Air Displays and Aerobatics Practice Exemption 2021 (CASA EX08/21)*. The variations take account of changes that have been made to the civil aviation legislation since *CASA EX08/21* was made.

Since instrument *CASA EX08/21* commenced, paragraph 157(1)(b) and regulation 165 of the *Civil Aviation Regulations 1988 (CAR)* were repealed by item 33 of Schedule 1 to the *Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021*. Schedule 1 to those regulations commenced on 2 December 2021. The CASR provisions that correspond to repealed regulation 157 of CAR are:

- (a) regulation 91.265, that sets out the minimum height rules that apply if an aircraft is flown over a populous area or a public gathering; and
- (b) relevantly — regulation 91.267, that sets out the minimum height rules that apply if an aircraft is flown other than over a populous area or a public gathering.

To approve a person to conduct an air display in Australian territory, CASA may grant an approval under regulation 91.045 of CASR for the purposes of regulation 91.180 of CASR. To approve a pilot in command to conduct aerobatic manoeuvres over a populous area, at an air display, or at night, CASA may grant an approval under regulation 91.045 of CASR for the purposes of subregulation 91.185(2) of CASR.

Since 2015, CASA has made several instruments that are broadly similar to the instrument, most recently instrument CASA EX08/21.

CASA is satisfied that the exemptions will have no negative impact on aviation safety. CASA separately deals with organisers of airshows and pilots about the aviation safety risks of low-level flying. Also, a pilot conducting low-level operations involving aerobatic manoeuvres must still hold an aerobatics (unlimited) flight activity endorsement.

Under the instrument, the pilot or pilot in command must comply with any conditions of an air display approval granted by CASA under regulation 91.045 for the purposes of regulation 91.180 of CASR, if the conditions are relevant to the operation. The pilot in command mentioned in the exemption in subsection 4(9) of the instrument must also:

- (a) before conducting the operation, conduct a risk assessment of the area to be flown over during the operation; and
- (b) ensure that the point on the ground, or water, vertically below the aircraft, during the operation, is not within 150 m of a person, vessel, vehicle or structure, or of livestock.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Civil Aviation Safety Authority